

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

March 22, 2012

Lyle W. Cayce
Clerk

No. 10-41193
Summary Calendar

D.C. Docket No. 9:07-CV-19

DARYL L. DAVIS,

Plaintiff - Appellant

v.

MICHAEL R. MCDUFFIE,

Defendant - Appellee

Appeal from the United States District Court for the
Eastern District of Texas, Lufkin

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on
file.

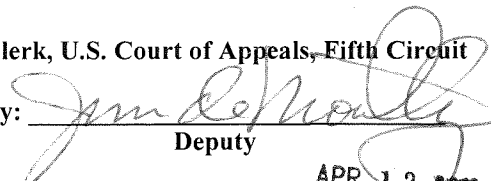
It is ordered and adjudged that the judgment of the District Court is
affirmed.

ISSUED AS MANDATE:

APR 13 2012

A True Copy
Attest

Clerk, U.S. Court of Appeals, Fifth Circuit

By: 
Deputy

New Orleans, Louisiana

APR 13 2012

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
APR 18 2012
BY DAVID J. MALAND, CLERK
DEPUTY

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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Plaintiff-Appellant

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MICHAEL R. MCDUFFIE,

Defendant-Appellee

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:07-CV-19

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

A jury found that Michael R. McDuffie violated the constitutional rights of Daryl L. Davis, Texas prisoner # 802738, and awarded Davis compensatory and punitive damages. Davis appeals the district court's denial of his postjudgment motion for a writ of execution to order the State of Texas to pay the damage award on behalf of McDuffie, its employee. Assuming arguendo that Davis may appeal the denial of such a motion, he is not entitled to relief.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

On appeal, Davis asserts that the Texas Safe Prisons Plan, enacted to protect vulnerable prisoners from assaults by other prisoners or guards, constituted a waiver of the State's sovereign immunity because the plan does not state that it does *not* waive the State's defenses and immunities and because it refers to statutes such as 42 U.S.C. 1983, which invites prisoners to file suits. Because Davis did not raise this theory of relief in the district court, we need not address it on appeal. *Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999). Moreover, the Safe Prisons Plan does not waive sovereign immunity because it does not expressly and unequivocally state that such a waiver has occurred. *Sossamon v. Texas*, 131 S. Ct. 1651, 1661 (2011).

Davis also asserts that he may obtain payment from the State pursuant to §§ 104.001-104.003 of the Texas Civil Practices and Remedies Code, which deal with the indemnification of state employees. Chapter 104 of the Code does not waive the defenses and immunities available to the State of Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 104.008; *Perry v. Texas A & I Univ.*, 737 S.W.2d 106, 108 (Tex. App. 1987). Although Davis did not bring a cause of action against the State and obtained judgment against McDuffie, his request that the State be ordered to pay the judgment is in the nature of asking that the State be held jointly and severally liable with McDuffie, which the indemnification statutes do not authorize. *See Perry*, 737 S.W.2d at 108. The indemnification statutes exist "primarily for the benefit of employees and offices of the State," not for the benefit of civil rights plaintiffs. *Id.* Thus, the district court did not err in concluding that the Texas indemnification statutes did not authorize Davis to obtain a writ of execution against the State for the money judgment awarded against McDuffie. Consequently, the judgment of the district court is AFFIRMED.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
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April 13, 2012

Mr. David Maland
Eastern District of Texas, Lufkin
United States District Court
104 N. 3rd Street
Lufkin, TX 75901-0000

No. 10-41193, Daryl Davis v. Michael McDuffie
USDC No. 9:07-CV-19

Enclosed, for the district court only, is a copy of the judgment issued as the mandate.


Record/original papers/exhibits are returned:

(2) Envelopes (1) Sealed Envelope

The electronic copy of the record has been recycled.

Sincerely,

LYLE W. CAYCE, Clerk

By: 
James deMontluzin, Deputy Clerk
504-310-7679

cc: (letter only)
Honorable Ron Clark
Mr. Daryl L Davis
Mr. Michael R McDuffie

P.S. to Judge Clark: A copy of the opinion was sent to your office via email the day it was filed.